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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Access Charge Reform

Price Cap Performance Review  
for Local Exchange Carriers

Transport Rate Structure and Pricing

End User Common Line Charges

CC Docket No. 96-262

CC Docket No. 94-1

CC Docket No. 91-213

CC Docket No. 95-72

**COMMENTS OF BELL ATLANTIC ON  
PETITIONS FOR RECONSIDERATION OF ACCESS REFORM ORDER**

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## **Summary and Introduction**

In its Access Reform Order, the Commission adopted a market-based approach that was intended to restructure rates to reflect how costs are incurred and to allow local exchange carriers an opportunity to compete with rival carriers. In evaluating the petitions for reconsideration, the Commission should maintain a market approach and reject petitions that seek to resurrect prior market distortions or to create new ones. At the same time, the Commission should approve those petitions that seek to modify portions of the Commission's order that inhibit local carriers' ability to compete.

Adherence to these principles requires a rejection of the arguments of several long distance carriers to undo the Commission's restructure of tandem switched access rates. Under the previous rules, users of tandem switched services did not pay their fair share and local carriers were forced to recover the shortfall through the transport interconnection charge ("TIC"). As the Commission recognized, such subsidies are not sustainable in today's more competitive market.

Similarly, AT&T's proposal to eliminate immediately TIC charges for long distance carriers using the transport of a competitive access provider would not allow local carriers an opportunity to recover the costs included in those charges. In its petition for stay, the New York and New England Telephone Companies showed that carriers should not be exempted from paying the residual TIC regardless of whether the local exchange carrier or a competitor provides

transport services. There is even less of a basis to exempt carriers from paying the current TIC. The current TIC recovers costs that local exchange carriers ("LECs") continue to incur regardless of which carrier provides transport services.

The Commission should adjust its presubscribed interexchange carrier charge ("PICC") to reduce the competitive imbalance created by piling the cost recovery burden on a small subset of customers. In particular, cost recovery for marketing expense -- which benefits all customers -- should be spread among all customers. Those customers that have more lines would still bear a greater burden as a natural result of higher caps and paying multiple per-line charges. The Commission should also allow the PICC on lines with Centrex service to be charged on a trunk equivalency relationship to lines with PBX services. This would allow these comparable services to compete on an equitable basis and would avoid the possibility of burdening existing Centrex customers with non-economic cost increases.

The Commission should also recognize the complexity of its new order and try to ameliorate the difficulties and potential distortions that may arise from implementing its directives. This means that the Commission should defer the implementation date for separate per-line charges for non-primary residential lines until one year after it specifies a definition for such lines. It also requires a clarification of the price cap mechanism to assure that full recovery of universal

service contributions is not undermined by the mechanics of the productivity offset. The Commission should also avoid new complications that could increase the cost of service such as AT&T's proposal to pro-rate access trunk port charges for traffic served by rival local carriers.

Finally, the Commission should not allow those parties that are already the beneficiaries of the new regulatory order to expand their advantage to the detriment of fair competition. For example, information services providers are treated as an end-user and thereby exempt from paying basic access charges. There is no basis to expand that exemption to allow them to avoid PICCs while the charge is imposed on other end-users. In addition, customers that benefited from lower rates available through long term contracts should not be permitted to abrogate those contracts in order to jump to rival carriers. There is also no reason to subsidize competition by requiring local carriers to waive nonrecurring costs associated with connection of circuits to the facilities of a rival carrier.

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**COMMENTS OF BELL ATLANTIC<sup>1</sup> ON  
PETITIONS FOR RECONSIDERATION OF ACCESS REFORM ORDER**

**I. The Commission Should Not Reconsider Its Rules For The  
Structure Of Tandem Switched Transport Rates.**

Several petitioners, primarily the small interexchange carriers ("IXCs") who rely heavily on tandem switched transport ("Tandem") services, ask the Commission to abandon its decision to restructure Tandem rates. They want the Commission to reverse its decisions to eliminate the unitary rate structure<sup>2</sup> and

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<sup>1</sup> The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

<sup>2</sup> See, e.g., CompTel at 16-23; Frontier at 3-8; WorldCom at 10-17.

to shift tandem switching costs to the Tandem Switching rate element.<sup>3</sup> They also want the Commission to take other actions that would reduce Tandem rates, such as making such rates non-distance sensitive,<sup>4</sup> and retaining the assumed 9,000 minutes of use per month in setting such rates.<sup>5</sup> In other words, they want to retain the current, heavily subsidized Tandem rates.

These arguments should be rejected. The Commission no longer has the luxury of mandating uneconomic rate structures to satisfy the interests of various industry groups. The Telecommunications Act of 1996 is facilitating increased competition throughout the local exchange market. Competition does not allow the local exchange carriers ("LECs") to maintain the type of uneconomic rate structures that were possible in a monopoly environment. The carriers' proposals are simply efforts to continue the favored treatment that the Commission established at divestiture to aid small IXC's. As the D.C. Circuit Court of Appeals has made clear, such treatment can not be continued indefinitely.<sup>6</sup> The Local Transport structure that the Commission adopted in the *Access Charge Reform Order* will allow the LECs to charge rates that more closely reflect the manner in which costs are incurred. The industry can, and will, adjust to these changes in ways that will promote competition and economic growth.

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<sup>3</sup> See, e.g., CompTel at 7-16; Frontier at 8-13.

<sup>4</sup> See, e.g., RCN at 6-7; see also Excel at 7-9.

<sup>5</sup> See, e.g., CompTel at 23-24; WorldCom at 10.

<sup>6</sup> See *Competitive Telecommunications Assn. v. FCC*, 87 F.3d 522, 532 (D.C. Cir. 1996).

Petitioners' arguments for retaining the unitary rate structure are not new; they are the same arguments that they have made repeatedly since the last Local Transport restructure proceeding, and that were considered and rejected by the Commission.<sup>7</sup> The Commission correctly found that the three-part rate structure will remove implicit subsidies from the Transport Interconnection Charge ("TIC") and that it will promote competition for each segment of Tandem services.<sup>8</sup> The petitioners present no new arguments that would warrant reconsidering these findings.

Petitioners argue that the Commission's actions will substantially increase the rates for Tandem services. For instance, they complain that the Tandem Switching rate will increase by 400 percent.<sup>9</sup> While this estimate may be exaggerated, substantial increases in the tandem switching rate should not be unexpected considering that the Commission limited the Tandem Switching rate element to 20% of the Tandem Switching revenue requirements in the 1992 *Local Transport Restructure Order*.<sup>10</sup> Other rate increases should also be expected as a result of the elimination of the unitary structure and the setting of Tandem rates in line with actual LEC costs, since the Commission, quite deliberately, adopted an interim Local Transport rate structure in 1992 that was designed to ameliorate

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<sup>7</sup> See *Access Charge Reform Order* at paras. 175-193.

<sup>8</sup> See *id.* at paras. 178-179.

<sup>9</sup> See, e.g., *CompTel* at 3.

<sup>10</sup> See *Transport Rate Structure and Pricing*, 7 FCC Rcd 7006 (1992) ("*Local Transport Restructure Order*") (cited in *Access Charge Reform Order* at para. 162).



the impacts on small IXCs, who are heavy users of Tandem services.<sup>11</sup> Since the current rate structure was never designed to be cost-based, no party should be shocked to learn that a rate structure that is intended to cover costs will cause some rates to increase -- in particular, the rates that were deliberately kept below cost to help the small IXCs.

If increases in Tandem rates are a source of concern, the solution is not to continue subsidizing Tandem rates through the residual TIC charges, or arbitrarily to disallow the costs, as proposed by some of the petitioners.<sup>12</sup> The "service-related" costs that the LECs will shift to the Tandem rate elements under the Commission's rules are real costs that the Commission's separations rules assign to the interstate jurisdiction, and that the LECs must recover in their interstate rates.<sup>13</sup> The solution, as a matter of *rate structure*, is to allow the LECs additional pricing flexibility to provide the IXCs with marketing incentives to continue to purchase Tandem transport services.

As noted by CompTel, the Commission's restructure of Tandem rates will significantly reduce the "cross-over" point at which an access customer could

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<sup>11</sup> See *Local Transport Restructure Order* at paras. 7021-22, 7037-38, 7040-42.

<sup>12</sup> See, e.g., RCN at 5; USLD, at 5; Comptel, at 15; Excel, at 4.

<sup>13</sup> Setting Tandem rates at long run incremental cost, as the small IXCs propose, would be inconsistent with the level of costs that are allocated to tandem switching functions by the Commission's rules. Unless a Joint Federal-State Board changes the separations rules, there is no basis for treating Tandem rates differently than other access rates or requiring some of these costs to be recovered elsewhere. Indeed, such a requirement would simply force tandem costs and associated overhead back into the rates for non-tandem transport services.

reduce its costs by shifting its traffic to dedicated transport services.<sup>14</sup> This will put pressure on LECs to offer discounts and promotional plans that will induce customers to continue to use tandem routing for two reasons. First, a LEC will not want customers to abandon its Tandem services where they are truly more efficient for that customer than dedicated facilities. Second, an access customer that is undertaking a reconfiguration of its transport services is an easy target for competitive access providers ("CAPs") that offer collocated transport services, and the customer itself may be able to take advantage of collocation to self-provision. For these reasons, the LEC will want to offer discounted Tandem rates to induce access customers to continue to use the LEC's Tandem services. This will benefit both the LECs and the IXC's that prefer Tandem services, especially the small IXC's.

The Commission has also already rejected arguments that Tandem service should not be distance-sensitive, and petitioners offer no new data or arguments that would cause the Commission to reconsider that decision. Moreover, a rule *requiring* the LECs to eliminate distance sensitivity from Tandem rates would produce an arbitrary rate structure, given the existence of distance sensitive rates for LEC dedicated local transport and special access services, which are functionally similar.<sup>15</sup>

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<sup>14</sup> See CompTel at 10-11 & Attachment.

<sup>15</sup> The Order gives the LECs the flexibility to determine whether to charge distance sensitive rates. *Access Reform Order* at para. 190.

Finally, petitioners offer no reason for the Commission to reverse its decision that Tandem rates should reflect actual minutes of use, rather than at an assumed higher "efficient" level of 9,000 minutes per month.<sup>16</sup> There is nothing in the record to support this efficiency assumption.<sup>17</sup> LECs have no reason to underutilize interoffice circuits that are compensated on a per-minute basis, so there is no basis to assume that their actual circuit loadings are inefficient. Moreover petitioners have made no showing that increasing loadings will allow for adequate service quality and reliability.

## **II. The Commission Should Not Give Customers Further Incentive to Avoid TIC Charges.**

### **A. The Commission Should Not Advance The Date For The Exemption From The Per-Minute Residual TIC For Collocated Transport.**

In the *Access Charge Reform Order*, the Commission prohibited the LECs from applying the new per-minute residual TIC rate element to minutes of use that are carried on CAP transport services.<sup>18</sup> In an *errata* order, the Commission clarified that this prohibition will take effect on January 1, 1998.<sup>19</sup> AT&T and

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<sup>16</sup> See, e.g., CompTel at 23-24.

<sup>17</sup> See *Access Charge Reform Order* at para. 207 (9000 minutes of use assumption was based on "1983 data" and "substantially overstated the actual traffic levels").

<sup>18</sup> See *Access Charge Reform Order* at para. 240.

<sup>19</sup> *Access Charge Reform Order Errata* at para. 2 (rel. June 4, 1997). Section 69.155 only applies to the new per-minute residual TIC to be established on January 1, 1998. The existing TIC rate element is governed by Section 69.124, which provides no exemption from the TIC for traffic that is carried on CAP transport.

TCG seek to apply this rule to the current TIC immediately, arguing that the rationale for this rule applies as well to the current TIC.<sup>20</sup>

As demonstrated in the stay petition filed by the New York and New England Telephone Companies, the rule in question is arbitrary and capricious as applied to the per-minute residual TIC that will be effective on January 1, 1998.<sup>21</sup> Rather than apply the rule to the TIC at any time, the Commission should grant the petition and stay the rule before it becomes effective.

Regardless, the rule has absolutely no justification with regard to the current TIC. The Commission adopted the rule as part of a comprehensive restructure of access charges that will allow the LECs to recover nontraffic sensitive costs that are currently recovered through usage-based charges, such as the TIC, through the new flat-rated presubscribed interexchange carrier charge ("PICC"). The Commission also allowed the LECs to reduce the TIC by shifting service-related costs to the Tandem rate elements and by targeting X-factor reductions to the TIC.<sup>22</sup> These actions will substantially reduce the remaining TIC costs to be recovered through the per-minute residual TIC rate element. Until that happens, the TIC rate will continue to be a source of recovery for costs

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<sup>20</sup> See AT&T at 10-12; TCG at 2-4.

<sup>21</sup> See Petition For Stay Pending Judicial Review (originally filed by NYNEX on July 23, 1997 -- control of the New York and New England Telephone Companies was merged into Bell Atlantic Corp. on August 14, 1997).

<sup>22</sup> See *Access Charge Reform Order* at para. 234.

that the Commission's current rules do not allow the LECs to recover in a cost-causative manner. If the Commission immediately prohibited the LECs from applying the TIC to CAP transport, it would effectively disallow costs that the LECs will continue to incur, and that they cannot shift to the appropriate service-related rate elements until January 1, 1998, following identification of the service-related TIC costs.<sup>23</sup>

The petitioners offer no justification (and there is none) for such disallowances. They seek an unjustified windfall that would substantially reduce further the IXCs' access charges and that would allow CAPs to capture the local transport market regardless of whether their prices for transport alone are competitive. The Commission has adopted an orderly plan to transition service-related costs to the Tandem rate elements, and to phase down the residual TIC over time. There is no basis for premature application of the residual TIC rule to the current interconnection charge. The Commission should reject this proposal.

**B. The Commission Should Not Require The LECs To Waive Term Contract Requirements Or Nonrecurring Charges.**

Seeking to take advantage of the rule prohibiting the LECs from applying the per-minute residual TIC to customers who do not use the LECs' transport services, TCG asks the Commission to adopt a "fresh look" rule that would

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<sup>23</sup> As the New York and New England Telephone Companies demonstrate in their Petition for Stay, this is also true for the per-minute residual TIC that will take effect in 1998. The problem is vastly greater in 1997 because the current TIC is much larger than the per-minute residual TIC.

require LECs to allow transport customers to terminate their term contracts for Local Transport services.<sup>24</sup> Similarly, WorldCom wants the Commission to require LECs to waive nonrecurring charges ("NRCs") for circuits that IXCs roll over from the LECs' transport services to the CAPs.<sup>25</sup>

The Commission should not allow the LECs' customers unfairly to abrogate term contracts that have allowed such customers to enjoy substantial discounts in return for committing to purchase the service for an agreed term. Permitting an IXC to abrogate its contract now would give it all of the benefits of its bargain without having to fulfill its corresponding obligation.

In addition, it would be unreasonable and confiscatory for the Commission to require the LECs to perform network reconfigurations without being allowed to recover the costs of those activities. The Commission's decision to require the LECs to waive NRCs for customers that shift from the LECs' Tandem services to the LECs' direct trunk transport services<sup>26</sup> still allows the LECs to recover such costs through contribution from the recurring rates for direct trunk transport services. In contrast, the LECs would receive no revenue to recover the nontraffic sensitive costs incurred from circuits that are rolled over to a CAP. Therefore, there is no justification for extending the NRC waiver to

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<sup>24</sup> See TCG at 4-6.

<sup>25</sup> See WorldCom at 19-21. WorldCom also wants LECs to waive NRCs for general IXC network reconfigurations other than the conversion of tandem-switched services to dedicated transport services

<sup>26</sup> See *Access Charge Reform Order* at para. 176.

other network configurations including where the LECs perform work to connect circuits to CAP locations.

### **III. The PICC Charge Should Only Be Modified To Avoid Market Distortions**

In creating the PICC, the Commission sought to rationalize the switched access rate structure in order to facilitate the movement to a competitive market.<sup>27</sup> In evaluating the reconsideration petitions seeking a modification to the PICC charge, the Commission should focus on its own objectives. Bell Atlantic agrees with the petitioners who argue that the Commission has forced too much cost recovery on multi-line customers in its efforts to protect single-line customers from rate increases. The result is a market distortion that places undue hardships on certain classes of customers so long as they purchase services from the incumbent LEC. Regardless of how the Commission responds to petitions that seek to eliminate *any* disparity between single line and multi-line users,<sup>28</sup> the Commission should, at a minimum, eliminate the most grievous market distortions in its current order, which are identified below. At the same time, the Commission should resist calls by some that seek to create new distortions for their own benefit.

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<sup>27</sup> *Id.* at para. 13.

<sup>28</sup> *See, e.g.,* Telecom Resellers at 6; USLD at 3.

### A. Marketing Expense Should Be Recovered Through All Lines

The Commission should grant USTA's petition to adjust the recovery mechanism for marketing expense.<sup>29</sup> In its reformed access structure, the Commission recognized that the interstate portion of the per-line costs are appropriately recovered either through per-line charges directly on all end-users or through PICCs on all lines. The Commission singles out marketing expenses, however, and requires recovery of these costs through the per-line charges only on a small subset of end-users -- those with multiple lines. The only justifications offered for this aberrant treatment are two conclusory statements that (1) there is "probably" a relationship between the number of lines purchased and the amount of effort the LEC expends to sell services and features; and (2) price cap LECs actively market second lines to residential customers.<sup>30</sup> Even if both statements are correct, they do not provide a basis to put the recovery of *all* marketing expense on the back of multi-line customers.

Marketing expenses are incurred for all customers, regardless of how many lines they purchase.<sup>31</sup> For example, in Bell Atlantic's advertising and promotion for vertical services, which the Commission acknowledges have been a focus of significant marketing efforts,<sup>32</sup> multi-line users are not specifically

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<sup>29</sup> USTA at 6.

<sup>30</sup> *Access Charge Reform Order* at para. 321.

<sup>31</sup> Attached as Exhibit 1 is a breakdown of Bell Atlantic's allocation of Account 6610 dollars among various service groups. Moreover, less than 5% of Bell Atlantic's consumer group's marketing expense can be attributed to marketing for second lines.

<sup>32</sup> *Access Charge Reform Order* at para. 321.



targeted. Instead, the marketing focuses on the services themselves without targeting to a particular subset of customers. Because roughly half of Bell Atlantic's residential customers subscribe to vertical features, and less than a fifth subscribe to second lines,<sup>33</sup> single line customers clearly make up an important part of the market for these services. As a result, the considerable marketing expense associated with vertical features is intended to – and does -- attract single line customers. The same is true of business customers. For example, almost half of Bell Atlantic's single line business customers subscribe to one or more vertical features and/or optional calling plans.<sup>34</sup>

In addition, the LECs are under legal requirements to advertise certain local exchange services to both single line and multi-line customers. In the Telecommunications Act of 1996, Congress required carriers to "advertise the availability of [services eligible for universal service support] and the charges therefor using media of general distribution" as a condition of receiving universal service support.<sup>35</sup> The Commission has also recognized the importance of informing consumers of other services; for example, it required consumer education concerning the availability and workings of caller ID service.<sup>36</sup>

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<sup>33</sup> See Exhibit 1 for data on value added service subscription data. The percentage of second lines is based on a marketing study. Such study data is useful in the aggregate, but cannot be relied upon to designate individual lines as non-primary for purposes of assessing higher per-line charges.

<sup>34</sup> See Exhibit 1.

<sup>35</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>36</sup> *Rules and Policies Regarding Calling Number Identification Service - Caller ID*, 9 FCC Rcd 1764, 1774 (1994).

Similarly, some States require the LECs to advertise the availability of services such as Lifeline and hearing-impaired services so that eligible customers will be able to take advantage of these services.<sup>37</sup>

Moreover, despite AT&T's rhetoric, expenses in Account 6610 also go directly to support interstate access services. Last year, Bell Atlantic spent more than \$100 million of Account 6610 expenses for, among other things, introducing the company's new products and services to access customers, surveying access customers to determine how best to meet their requirements, and providing a steady flow of information regarding Bell Atlantic's existing services to existing and potential access customers.

By spreading marketing expenses more equitably, the Commission would avoid unfairly burdening multi-line customers with excessively high SLC and PICC charges. Multi-line customers will still pay more than single-line customers due to the additional number of lines that are assessed charges and the lower SLC and PICC caps for single line customers.

AT&T seeks to expand the free ride it receives under the order to other expenses that may not be incurred when selling to a reseller. AT&T confuses two concepts. While retail price less avoided cost is the pricing measure for a

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<sup>37</sup> See, e.g., *Proceeding on the Motion of the Commission to Investigate Performance-Based Incentive Regulation Plans*, New York Public Service Commission Case No. 92-C-0665, Performance Regulation Plan for New York Telephone Company at 11-12 (filed Sept. 26, 1994) (requiring outreach and education for LifeLine Service and for telecommunications assistive devices).

resale service under the Act, that pricing measure has no relevance here where resale is not at issue. AT&T seeks to avoid paying for the recovery of the interstate portion of costs for lines that will be sold on a *retail* basis. AT&T's argument is a backdoor way to challenge the fundamental federal-state separations policy of recovering a portion of per-line costs through interstate access rates, which underlies the entire basis for setting PICC charges. AT&T offers no justification for adopting such a radical departure from accepted separations and cost recovery policies.

**B. Centrex PICCs Should Be On A Per-Trunk Equivalent Basis**

USTA's petition also highlights the anomalous treatment accorded Centrex customers.<sup>38</sup> Local regulators with oversight responsibility for this service have recognized that Centrex service is substitutable with PBX-based service and should not be regulated in a way that inhibits competition between the services.<sup>39</sup> Accordingly, USTA proposes that PICCs be assessed on Centrex lines based on a trunk equivalency relationship to PBX-based service.

USTA sets forth a numeric example that demonstrates that, if IXC's directly pass through the new PICC charges to Centrex customers, per-line charges for Centrex services could be more than 60 times higher than equivalent

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<sup>38</sup> USTA at 2.

<sup>39</sup> See, e.g., New York Public Service Commission, Case 88-C-004, 88-C-063, 91-C-1174, Opinion No. 91-21, *Opinion and Order Concerning Comparably Efficient Interconnection Arrangements, and Instituting Proceeding* at 30, 36-40 (Nov. 25, 1991).

service offered through digital PBX.<sup>40</sup> If the IXC's choose to pass through the new PICC charges, the disparity between individual customers will be dramatic. For example, a customer with 18,000 Centrex lines would pay \$53,210 per month in PICC charges. In contrast, a customer with equivalent PBX service (e.g., 18,000 telephone numbers on a PBX that is connected to the network with 22 PRI ISDN lines) would pay only \$303 per month in PICC charges.

The County of Los Angeles, a heavy user of Centrex services, demonstrates that it will be subject to a \$4.6 million annual increase in its phone service if IXC's pass through multi-line business PICCs.<sup>41</sup> As explained by Los Angeles, applying the PICC on a PBX-trunk equivalency basis "will mitigate much of the impact" on users and would also "eliminate the non-economic distortion between PBX and Centrex pricing" that would otherwise "eliminate Centrex as an economically viable service choice."<sup>42</sup>

If IXC's choose to pass through the new PICC charges directly to Centrex customers, eliminating Centrex as an economically viable service choice, existing customers who have determined that Centrex is the optimal business choice to meet their needs will instead be forced to move to PBX service. A move to PBX service is likely to impose substantial burdens on these customers and disrupt

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<sup>40</sup> USTA at 3.

<sup>41</sup> County of Los Angeles at 2.

<sup>42</sup> *Id.* at 10; see also ICA at 3 (Commission's PICC rule "seriously undermines the vitality of Centrex systems and basically ensures that they will no longer be a competitive alternative for business customers.").

their business.<sup>43</sup> In order to ensure that businesses are not driven to forgo use of their optimal telecommunications service choice and forced to undergo unnecessary business disruptions, the Commission should adopt USTA's proposal to assess PICC charges for Centrex service on a per trunk or other equivalent basis, rather than a per line basis.

### C. ISPs Should Not Receive Additional Exemptions

Sprint argues that the Commission should "clarify" that information service providers ("ISPs"), who are currently exempted from paying access charges, should be exempted from any PICCs.<sup>44</sup> Regardless of the merits of the current exemption,<sup>45</sup> the Commission should not expand it. Such a blanket ruling would go well beyond the special treatment ISPs are already afforded. Under current rules, ISPs "may purchase services from incumbent LECs under the same intrastate tariffs available to end users."<sup>46</sup> In other words, ISPs are to be treated like an end-user rather than an access customer. This means that for an ISP that has presubscribed to a long distance carrier, it is the long distance carrier

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<sup>43</sup> For example, time and resources must be spent to train personnel to use the new system. Unlike Centrex service which permits customers largely to rely on their local telephone company for support, PBX service requires greater operational involvement by the customer. The conversion from Centrex to PBX service also triggers the disruption and risks to the company's business associated with a major system cutover. In addition, many employees' direct dial numbers change, requiring printing of new stationery, business cards, company directories and other documents.

<sup>44</sup> Sprint at 9.

<sup>45</sup> Bell Atlantic intends to challenge the ISP exemption as part of its petition for judicial review of this order.

<sup>46</sup> *Access Charge Reform Order* at para. 342.

that is responsible for the PICC. An ISP that does not presubscribe, however, must pay the PICC directly, just like any other end-user customer. As the Commission recognized, assessing the PICC "directly against end users that do not presubscribe to a long distance carrier" should eliminate the incentive to avoid the charge by not presubscribing.<sup>47</sup> This logic holds equally true for ISPs. Without an alternative recovery mechanism, any other rule would either leave the LEC with no opportunity to recover the cost of that line, or force LECs to recover those costs from remaining customers -- neither of which is a reasonable policy option.

**D. The PICC Provides No Basis To Ignore Geographic Rate Averaging.**

Without offering any new support, WorldCom references its prior arguments that the creation of per-line charges provide a basis to exempt long distance carriers from the rate averaging requirements of section 254(g).<sup>48</sup>

WorldCom does not even bother to attempt to demonstrate that its request for forbearance meets the section 10 statutory standard. Most tellingly, WorldCom does not respond to the Commission's observation that "IXCs now pay access charges that often vary from location to location and from incumbent LEC to incumbent LEC, and still maintain geographically averaged rates."<sup>49</sup> As a result,

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<sup>47</sup> *Id.* at para. 92.

<sup>48</sup> WorldCom at 22-23.

<sup>49</sup> *Access Reform Order* at para. 97.

there is no basis for the Commission to depart from its conclusion that "forbearance of section 254(g) is not warranted."<sup>50</sup>

**E. Higher Charges for Non-Primary Lines Should Be Deferred Until Implementation Issues are Resolved**

The Commission has established a higher PICC for non-primary residential lines than for primary lines beginning January 1, 1998. As USTA and Sprint have demonstrated, however, significant definitional issues must be resolved before LECs can implement the Commission's order.<sup>51</sup>

Among the most critical issues are the criteria for determining if multiple lines should be attributed to a particular subscriber, which of multiple lines is to be deemed the primary line, and how to address attempts to evade higher non-primary line PICC charges. Sprint also asks the Commission to determine which carrier should pay the PICC charge when a consumer has chosen one carrier for interLATA interstate calls and a second carrier for intraLATA interstate calls.<sup>52</sup>

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<sup>50</sup> *Id.*

<sup>51</sup> USTA at 4-5; Sprint at 4-5.

<sup>52</sup> Sprint at 4-5. Charging the PICC to the carrier that most consumers would think of as their national long distance carrier – the interLATA interstate carrier – would be more consistent with consumer's likely expectations, particularly if IXC's decide to pass PICC charges directly through to consumers. Since the split carrier situation is also likely to be the exception rather than the rule, it is also more administratively expedient to assign the PICC to the national carrier rather than to try to assess a portion of the PICC to each carrier or to examine the consumer's actual calling patterns to determine to which carrier the PICC should be assigned.

Although the Commission has promised to adopt a definition of non-primary line by the end of 1997,<sup>53</sup> that will not permit LECs to make the necessary changes to their billing systems, train customer service representatives and educate consumers concerning the new definitions and requirements by the January 1, 1998 implementation date. The Commission should grant USTA's request to extend the implementation deadline for assessing higher charges on non-primary lines until one year after the Commission issues its order resolving these issues.<sup>54</sup> The additional time will permit the industry to make a single, definitive move to the new rate structure using a common set of definitions and to introduce their customers to these rate changes with appropriate explanations, thereby avoiding unnecessary consumer confusion.<sup>55</sup>

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<sup>53</sup> *Access Reform Order* at para. 83.

<sup>54</sup> The Commission should also clarify that the multi-line business SLC applies whenever a reseller provides an additional line to a single line business customer, as requested by USTA. USTA at 8-9. This clarification would simply mirror the rules the Commission has established for resellers selling second lines to residential customers. *See* 47 C.F.R. Section 69.152(d)(3).

<sup>55</sup> Sprint also asks the Commission to require LECs to provide customer-specific PICC information to permit IXC's to verify their access bills. (Sprint at 3-4) There is no need for any additional rulemakings or pronouncements by the Commission with regard to this issue because there is already a process in place that allows to LECs to provide the necessary information to resolve billing inquiries, and any disputes that arise can be resolved, if necessary, through the Commission's complaint process.



#### IV. The Commission Should Not Constrain LECs' Ability To Recover Universal Service Contributions

In the Universal Service Order, the Commission recognized that "carriers may recover universal service contributions via interstate mechanisms."<sup>56</sup> As USTA explains, the Commission should clarify that the price cap productivity X factor does not act as an artificial limit on recovery.<sup>57</sup> If universal service recovery were subject to such reductions, then LECs would only have the opportunity to recover a portion of their contribution. Moreover, the under-recovery would compound over time, exacerbating the problem going forward.

There is no question that recovery of universal service contributions is unrelated to the purpose of the productivity offset. Indeed, carriers like Bell Atlantic may well end up contributing universal service dollars that are exported to other carriers. It would be completely arbitrary to suggest that Bell Atlantic's productivity has any relationship with the amount it is required to pay an unaffiliated carrier for universal service support.

AT&T argues that LEC universal service contributions may *only* be recovered through an end-user charge.<sup>58</sup> While a surcharge imposed evenly on all end users is one reasonable recovery mechanism, there is nothing in the Act

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<sup>56</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, para. 378 (rel. May 8, 1997).

<sup>57</sup> USTA at 5.

<sup>58</sup> AT&T at 2. In its Universal Service Petition for Reconsideration, MCI makes a similar argument. See MCI Petition for Reconsideration and Clarification, CC Docket No. 96-45 at 6-8 (filed July 17, 1997).